

**Letter of Findings Number: 01-20110165P  
Individual Income Tax – Late Filing Penalty  
For the Period 2008**

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**ISSUE**

**I. Tax Administration – Late Filing Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the late filing penalty.

**STATEMENT OF FACTS**

Taxpayers, who file a joint income tax return, were assessed a penalty for late payment of 2008 individual income tax. Taxpayers protested the penalty. This Letter of Findings is written pursuant to information in Taxpayers' protest file, including the letter of protest, pursuant to request from Taxpayers.

**I. Tax Administration – Late Filing Penalty.**

**DISCUSSION**

Taxpayers protest the imposition of a penalty for late payment of income tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers' return for 2008 was filed late as a result of an error committed by their tax preparer. The tax preparer had miscoded the county of residence in its tax software and since the name of the county does not print out on the return, Taxpayers did not know the county was incorrect. Taxpayers rectified their filing error once they were notified of the mistake.

Taxpayers must demonstrate that they had reasonable cause for not timely remitting their Indiana income tax. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#). Taxpayers' tax preparer, standing in Taxpayers' shoes, did not exercise "ordinary business care and prudence."

**FINDING**

Taxpayers' protest is respectfully denied.

*Posted: 09/28/2011 by Legislative Services Agency*  
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